

Appl. No. : 09/314,251
Filed : 05/18/99

B1
edges thereof, wherein the notch is in fluid communication with the cell and allows entry of the liquid sample into the cell.

REMARKS

Applicants thank the Examiner for meeting with the undersigned attorney in an interview on June 30, 2000, which was summarized in the Interview Summary provided by the Examiner. The specification has been amended to correct an obvious typographical error, in which the incorrect reference numeral 17 was used to refer to the notch. Evidence that this was an obvious typographical error can be found by reference to other uses of the term "notch" in connection with reference numeral 16. *See, e.g.*, page 8 lines 3-7. Claim 1 has been amended to clarify that the notch passes through the entire thickness of the strip. Support for this amendment is found in the specification, *e.g.* at page 7, line 15, and in Figure 12. Claims 1-8 are pending.

Claim Rejections - 35 U.S.C. § 103(a)

All of the present claim rejections are based on U.S. Patent No. 5,437,999. The Final Office Action characterizes the structure indicated by reference numeral 49 of the '999 patent as a notch. However, in the assembled sensor of the '999 patent, this structure is a capillary space, not a notch. *See* Fig. 6 and Column 8, lines 23-60. Capillary action within this space is used to draw sample in through the opening 50 or the vent port 51. Column 8, lines 48-50. In order to function as a capillary space, the channel must be overlaid top and bottom by other layers of the sensor. Column 8, lines 23-26.

Accordingly, the capillary space of the '999 patent is entirely different from the notch of the present claims, which notch includes the entire thickness of the strip. If the capillary space of the '999 patent were instead a notch through the entire thickness of the '999 sensor, the capillary action that is essential to its function would be destroyed. If a modification to a feature in a prior art reference would render it unsatisfactory for its intended purpose, then that reference cannot form the basis for a rejection under § 103. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984). Since the '999 patent does not disclose or suggest a notch passing through the entire thickness of the strip, Applicants respectfully request that all pending rejections be withdrawn.

Appl. No. : 09/314,251
Filed : 05/18/99

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. The Examiner is invited to contact the undersigned attorney at the telephone number appearing below to discuss any remaining issues that may exist.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 18 Aug 2000

By. 

Dale C. Hunt
Registration No. 41,857
Attorney of Record
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(619) 235-8550

S:\DOCS\DC\DC\CH-4103.DOC
081800